

2. The State's representations to the Court in this regard were based on good faith assurances from Camp, Dresser and McKee ("CDM"), an environmental consulting firm retained by the State. Aff. of Darren L. Brown, Ex. A, ¶¶ 1-4. Specifically, on March 25, 2008, CDM assured the undersigned that all pending discoverable documents in its files had been submitted to the State for production to Defendants. *Id.* at ¶ 5. At the time, CDM believed this to be true. *Id.* We now know that CDM was mistaken. *Id.* Based on new information from CDM, it now appears that, as of March 25, 2008, there were six complete 2007 field books and pages from three other 2007 field books which had inadvertently not been produced to Defendants during the normal course of discovery. *Id.* All but 16 pages of these field books were in fact produced to the Defendants on May 15, 2008 as part of the expert "considered" materials of CDM's Darren L. Brown ("Mr. Brown's"). *Id.*

3. The delay in producing these field books and field book pages was the result of simple human error. *See generally* Aff. of Darren L. Brown, Ex. A.

4. On May 15, 2008, the State produced thousands of documents to Defendants as Mr. Brown's expert witness considered materials, including the attached 2007 Bennett Field Book, 2007 Supplemental Fall Sampling Field Book, 2007 Lake Sampling Field Book, Fish Sampling 2007 Field Book, Fish Sampling 2007 Field Book (Mulcrone), IRW Fish Shocking Field Book and Intensive Sampling 2007 Field Book (pp. 1 – 70) (*See* Exs. A-1 – A-3; and A-6 – A-9). On June 9, 2008, it was brought to Mr. Brown's attention that part of the 2007 Bennett Field Book (pages 91 through 112) and the entire 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book were not produced prior to May 15. Aff. of Darren L. Brown, Ex. A, ¶ 6. The same 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book were also produced to Defendants on May 15 as

part of Dr. Bert Fisher's considered materials. (*See* Fisher00005583_2007 and Fisher00005615_2007). *Id.*

5. Mr. Brown was first made aware of the possibility that these field books were not previously produced when Lithochimeia, Inc. (Dr. Fisher's consulting firm) found that the 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book had not been Bates-numbered prior to the production of considered materials on May 15. Aff. of Darren L. Brown, Ex. A, ¶ 7. Upon learning this, Mr. Brown checked his records from the same time frame and confirmed that CDM did not submit the 2007 Supplemental Fall Sampling Field Book or 2007 Lake Sampling Field Book to counsel for the State prior to delivery of expert considered materials in May 2008. *Id.* Mr. Brown also determined that the final 22 pages of the 2007 Bennett Field Book were not submitted to the State until he delivered his expert considered materials in May 2008. *Id.*¹

6. The explanation for the delay is as follows. On October 29, 2007, Brian Bennett of CDM sent electronic copies of the completed 2007 Bennett Field Book, 2007 Supplemental Fall Sampling Field Book and 2007 Lake Sampling Field Book to Mr. Brown via email. Exs. A-4 and A-5. At the time these emails were sent, Mr. Brown was at an appointment outside of his office. Aff. of Darren L. Brown, Ex. A, ¶ 8. While he did receive the October 29 emails on his PDA device, this resulted in the emails being marked as "read" on his office computer. *Id.* In the course of trying to catch up with client requests upon his return to the office, Mr. Brown simply forgot to place the field book files into a folder for

¹ The first 90 pages of the 2007 Bennett Field Book were produced to Defendants on August 7, 2007 in the normal course of discovery (STOK0025793 – 25839 (double-sided pages)).

submittal to counsel for the State. *Id.* Mr. Brown did not recognize his error until June 9, 2008 (as described above). *Id.*

7. After discovering that these field books and field book pages had not been produced during the normal course of discovery, CDM, at the request of counsel for the State, conducted an additional investigation of its files to ensure that there were not any other documents or items that were inadvertently delayed. Aff. of Darren L. Brown, Ex. A, ¶ 9. After this investigation, CDM found that the following additional field books were produced to Defendants on May 15, 2008 as part of Mr. Brown's considered materials, but were not produced earlier through the normal course of discovery:

- ▶ Fish Sampling 2007 Field Book (Ex. A-6) (pages 1 through 26)
- ▶ Fish Sampling 2007 Field Book (Mulcrone) (Ex. A-7) (pages 1 through 10)
- ▶ IRW Fish Shocking Field Book (Ex. A-8) (pages 1 through 19)
- ▶ Intensive Sampling 2007 Field Book (Ex. A-9) (pages 1 through 70)

8. CDM further determined that 16 pages from two 2007 field books were not produced on May 15, 2008. Aff. of Darren L. Brown, Ex. A, ¶¶ 10-12.

9. As explained fully in Mr. Brown's Affidavit, the cause of delay in producing these field books and field book pages was also simple human error. Aff. of Darren L. Brown, Ex. A, ¶¶ 13-16.

10. The sampling events chronicled in the attached field books and field book pages did not involve bacteria. None of these field books would have been pertinent to the issues raised during the hearing on Plaintiff's Motion for Preliminary Injunction. Aff. of Darren L. Brown, Ex. A, ¶ 17.

Respectfully submitted,

W.A. Drew Edmondson OBA # 2628
Attorney General
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Assistant Attorneys General
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page, OBA #6852
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

/s/ Louis W. Bullock

Louis W. Bullock, OBA #1305
Robert M. Blakemore, OBA #18656
Bullock Bullock & Blakemore
110 West 7th Street, Suite 707
Tulsa, OK 74119-1031
(918) 584-2001

Frederick C. Baker (admitted *pro hac vice*)
Lee M. Heath (admitted *pro hac vice*)
Elizabeth C. Ward (admitted *pro hac vice*)
Elizabeth Claire Xidis (admitted *phv*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold (admitted *pro hac vice*)
Ingrid L. Moll (admitted *pro hac vice*)

Motley Rice, LLC
 20 Church Street, 17th Floor
 Hartford, CT 06103
 (860) 882-1676

Jonathan D. Orent (admitted *pro hac vice*)
 Michael G. Rousseau (admitted *phv*)
 Fidelma L. Fitzpatrick
 Motley Rice, LLC
 321 South Main Street
 Providence, RI 02940
 (401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I certify that on the 27th day of June, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W.A. Drew Edmondson, Attorney General	fc_docket@oag.ok.gov
Kelly Hunter Burch, Assistant Atty General	kelly.burch@oag.ok.gov
J. Trevor Hammons, Assistant Atty General	trevor.hammons@oag.ok.gov
Daniel P. Lennington, Assistant Atty General	daniel.lennington@oag.ok.gov
M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS	
Louis W. Bullock	lbullock@bullock-blakemore.com
Robert M. Blakemore	bblakemore@bullock-blakemore.com
BULLOCK BULLOCK & BLAKEMORE	

Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Elizabeth C. (Liza) Ward	lward@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Michael G. Rousseau	mrousseau@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
MOTLEY RICE, LLC	
COUNSEL FOR PLAINTIFF, STATE OF OKLAHOMA	
Robert P. Redemann	rredemann@pmrlaw.net
Lawrence W. Zeringue	lzingue@pmrlaw.net
David C. Senger	dsenger@pmrlaw.net
PERRINE, McGIVERN, REDEMANN, REID, BERRY & TAYLOR, PLLC	
Robert E. Sanders	rsanders@youngwilliams.com
E. Stephen Williams	steve.williams@youngwilliams.com
YOUNG WILLIAMS	
COUNSEL FOR DEFENDANT CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.	
John H. Tucker	jtucker@rhodesokla.com
Colin H. Tucker	chtucker@rhodesokla.com
Theresa Noble Hill	thill@rhodesokla.com
Leslie Jane Southerland	lsoutherland@rhodesokla.com
RHODES, HIERONYMUS, JONES, TUCKER & GABLE	
Terry W. West	terry@thewestlawfirm.com
THE WEST LAW FIRM	
Delmar R. Ehrich	dehrich@faegre.com
Bruce Jones	bjones@faegre.com
Krisann C. Kleibacker Lee	kklee@faegre.com
Todd P. Walker	twalker@faegre.com
FAEGRE & BENSON LLP	
Dara D. Mann	dmann@mckennalong.com
McKENNA, LONG & ALDRIDGE LLP	
COUNSEL FOR DEFENDANT	

CARGILL, INC. and CARGILL TURKEY PRODUCTION, LLC	
George W. Owens	gwo@owenslawfirm.com
Randall E. Rose	rer@owenslawfirm.com
OWENS LAW FIRM, P.C.	
James M. Graves	jgraves@bassettlawfirm.com
Gary V. Weeks (pro hac vice)	gweeks@bassettlawfirm.com
Woody Bassett (pro hac vice)	wbassett@bassettlawfirm.com
K.C. Dupps Tucker (pro hac vice)	kctucker@bassettlawfirm.com
Paul E. Thompson, Jr. (pro hac vice)	
BASSETT LAW FIRM	
COUNSEL FOR DEFENDANT GEORGE'S INC. AND GEORGE'S FARMS, INC.	
A. Scott McDaniel	smcdaniel@mhla-law.com
Nicole Longwell	nlongwell@mhla-law.com
Philip D. Hixon	phixon@mhla-law.com
Craig A. Mirkes	cmirkes@mhla-law.com
McDANIEL HIXON LONGWELL & ACORD, PLLC	
Sherry P. Bartley	sbartley@mwschw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC	
COUNSEL FOR DEFENDANT PETERSON FARMS, INC.	
John R. Elrod	jelrod@cwlaw.com
Vicki Bronson	ybronson@cwlaw.com
Bruce W. Freeman	bfreeman@cwlaw.com
CONNER & WINTERS, LLP	
COUNSEL FOR DEFENDANT SIMMONS FOODS, INC.	
Robert W. George	robert.george@kutakrock.com
Michael R. Bond	michael.bond@kutakrock.com
Erin W. Thompson	erin.thompson@kutakrock.com
KUTAK ROCK LLP	
Stephen Jantzen	sjantzen@ryanwhaley.com
Paula Buchwald	pbuchwald@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com

L. Bryan Burns (pro hac vice)	bryan.burns@tyson.com
RYAN, WHALEY & COLDIRON	
Thomas C. Green	tgreen@sidley.com
Mark D. Hopson	mhopson@sidley.com
Timothy Webster	twebster@sidley.com
Jay T. Jorgensen	jjorgensen@sidley.com
Gordon D. Todd	gtodd@sidley.com
SIDLEY AUSTIN LLP	
COUNSEL FOR DEFENDANTS TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., and COBB-VANTRESS, INC.	
R. Thomas Lay	rtl@kiralaw.com
KERR, IRVINE, RHODES & ABLES	
Jennifer S. Griffin	jgriffin@lathropgage.com
David G. Brown	dbrown@lathropgage.com
LATHROP & GAGE, L.C.	
COUNSEL FOR DEFENDANT WILLOW BROOK FOODS, INC.	
Robin S. Conrad	rconrad@uschamber.com
NATIONAL CHAMBER LITIGATION CENTER	
Gary S. Chilton	gchilton@hcdattorneys.com
HOLLADAY, CHILTON AND DEGIUSTI, PLLC	
COUNSEL FOR US CHAMBER OF COMMERCE AND AMERICAN TORT REFORM ASSOCIATION	
D. Kenyon Williams, jr.	kwilliams@hallestill.com
Michael D. Graves	mgraves@hallestill.com
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON	
COUNSEL FOR POULTRY GROWERS / INTERESTED PARTIES / POULTRY PARTNERS, INC.	
Richard Ford	richard.ford@crowedunlevy.com
LeAnne Burnett	leanne.burnett@crowedunlevy.com

CROWE & DUNLEVY	
COUNSEL FOR OKLAHOMA FARM BUREAU, INC.	
Kendra A. Jones, Assistant Attorney General	kendra.jones@arkansasag.gov
Charles L. Moulton, Sr. Ass't AG	charles.moulton@arkansasag.gov
COUNSEL FOR STATE OF ARKANSAS	
Mia Vahlberg	mvahlberg@gablelaw.com
GABLE GOTWALS	
James T. Banks	jtbanks@hhlaw.com
Adam J. Siegel	ajsiegel@hhlaw.com
HOGAN & HARTSON	
COUNSEL FOR NATIONAL CHICKEN COUNCIL, U.S. POULTRY & EGG ASS'N AND NATIONAL TURKEY FEDERATION	
John D. Russell	jrussell@fellerssnider.com
William A. Waddell, Jr. (pro hac vice)	waddell@fec.net
David E. Choate (pro hac vice)	
FELLERS SNIDER BLANKENSHIP BAILEY & TIPPENS P.C.	
COUNSEL FOR ARKANSAS FARM BUREAU FEDERATION	
Barry G. Reynolds	Reynolds@titushillis.com
Jessica E. Rainey	jrainey@titushillis.com
TITUS HILLIS REYNOLDS LOVE DICKMAN & McCALMON	
William S. Cox III	wcox@lightfootlaw.com
Nikaa B. Jordan	njordan@lightfootlaw.com
LIGHTFOOT FRANKLIN & WHITE LLC	
COUNSEL FOR AMERICAN FARM BUREAU FEDERATION and NATIONAL CATTLEMEN'S BEEF ASSOCIATION, AMICUS CURIAE	
Richard Mullins	richard.mullins@mcafeetaft.com
McAFEE & TAFT PC	

COUNSEL FOR TEXAS FARM BUREAU, TEXAS CATTLE FEEDERS ASSN, TEXAS PORK PRODUCERS ASSN, AND TEXAS ASSN OF DAIRYMEN	
--	--

s/ Louis W. Bullock _____
Louis W. Bullock

WITHDRAWN